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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,540	04/22/2004	Jerry D. Folkens	0632-0001.01	7330
7590	03/22/2005		EXAMINER	
Stephen B. Heller Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. 200 West Adams Street - Suite 2850 Chicago, IL 60606			WILLIAMS, THOMAS J	
			ART UNIT	PAPER NUMBER
			3683	
DATE MAILED: 03/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/829,540	FOLKENS ET AL.
	Examiner Thomas J. Williams	Art Unit 3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 19 is/are allowed.
- 6) Claim(s) 1-6, 10-18, 20 and 21 is/are rejected.
- 7) Claim(s) 7-9 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/22/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

## **DETAILED ACTION**

1. Acknowledgement is made in the receipt of the information disclosure statement filed April 22, 2004.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 11 recites the limitation "said spring" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,648,577 to Weber.

Re-claim 1, Weber discloses a vibration damper having a top member 16 and a bottom member 14, comprising: an open-ended receptacle 11 on the bottom member; a plunger 17 depending downwardly from the top member (it is disclosed in column 4 line 1 that the plunger tube 17 can be cylindrical, thus the walls will be parallel), a circumferential channel is defined

between the receptacle and the plunger; a transversely disposed plate 24 is affixed at the bottom of the plunger, the plate is provided with a plurality of apertures for fluid flow.

Re-claim 4, tubes 21 welded to structure 39 are interpreted as strengthening members disposed within the plunger, they are provided with openings at a location above the viscous fluid to allow for the circulation of air. The top plate member 22 is capable of being positioned such that a pocket of air can exist above the fluid.

Re-claim 10, see figure 4.

7. Claims 1-3, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 42 13 043 to Schneider et al.

Re-claim 1, Schneider et al. disclose a vibration damper having a top member 11 and a bottom member 22, comprising: an open-ended receptacle 21 on the bottom member; a plunger 27 depending downwardly from the top member; a circumferential channel is defined between the receptacle and the plunger; a transversely disposed plate 24 is affixed at the bottom of the plunger, the plate is provided with a plurality of apertures for fluid flow.

Re-claims 2 and 3, see figure 1, the rim is element 13.

Re-claim 18, see figure 3, plunger 27 is spaced from the top member and now has a top marginal edge spaced from the top member.

#### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 2, 3, 5, 6, 11, 16, 17, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in view of Schneider et al.

Re-claims 2, 3, 16 and 20, Weber fails to teach sealing means between the receptacle and a rim depending downwardly from the top portion. Schneider et al. teach a sealing means between a rim and the receptacle, this aids in retaining the fluid within the damper device. It would have been obvious to one of ordinary skill in the art to have provided the damper of Weber with a sealing means between a rim and the receptacle as taught by Schneider et al., thus preventing the loss of fluid from the damper and preventing the ingress of foreign material into the damper.

Re-claims 5, 6, 17 and 21, tubes 21 welded to structure 39 are interpreted as strengthening members (or baffles) disposed within the plunger, they are provided with openings at a location above the viscous fluid to allow for the circulation of air.

Re-claim 11, the springs 23 are adjacent the receptacle.

11. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber.

Re-claim 12, Weber is silent regarding the open area of the plate as being in a range of 35-65 percent of the total area. The size and number of apertures in the plate would have defined the amount of open area in the plate as well the overall rate of flow. It would have been obvious to one of ordinary skill in the art as a matter of design choice to have provided the plate member of Weber with the appropriate open area as needed, such as between 35 and 65 percent, since the applicant has not disclosed that having the open area within the recited range solves any stated problem or is for any particular purpose and it appears that the plate member of Weber would have performed equally well with an open area between 35 and 65 percent.

Re-claims 13 and 14, Weber fails to teach a plurality of plates used to define a single plate. Furthermore, Weber is silent regarding the thickness of the plate member. To have manufactured the plate member as two plates is an obvious variant. Making separate what was whole is not a patentable feature, see *Nerwin v. Erlichman*, 168 USPQ 177, 179 (PTO Bd. of Int. 1969). It would have been obvious to one of ordinary skill in the art to have simply produced the plate from two individual plates and to have manufactured the plate to an overall thickness between 0.06 and 1 inch, both of which are considered engineering and manufacturing requirements.

Re-claim 15, Weber fails to teach the receptacle and plunger being rectangular. This is merely a change in shape, both shapes a functional equivalents. It would have been obvious to one of ordinary skill in the art as a matter of design choice to have simply formed the plunger and receptacle of Weber as rectangles, since the applicant has not disclosed that the rectangular shape is for any particular purpose or solves any stated problem and it appears that the damping device of Weber would have performed equally well when having a rectangular shape.

12. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al.

Re-claim 12, Schneider et al. is silent regarding the open area of the plate as being in a range of 35-65 percent of the total area. The size and number of apertures in the plate would have defined the amount of open area in the plate as well the overall rate of flow. It would have been obvious to one of ordinary skill in the art as a matter of design choice to have provided the plate member of Schneider et al. with the appropriate open area as needed, such as between 35 and 65 percent, since the applicant has not disclosed that having the open area within the recited range solves any stated problem or is for any particular purpose and it appears that the plate member of Schneider et al. would have performed equally well with an open area between 35 and 65 percent.

Re-claims 13 and 14, Schneider et al. fail to teach a plurality of plates used to define a single plate. Furthermore, Schneider et al. is silent regarding the thickness of the plate member. To have manufactured the plate member as two plates is an obvious variant. Making separate what was whole is not a patentable feature, see *Nerwin v. Erlichman*, 168 USPQ 177, 179 (PTO Bd. of Int. 1969). It would have been obvious to one of ordinary skill in the art to have simply produced the plate from two individual plates and to have manufactured the plate to an overall thickness between 0.06 and 1 inch, both of which are considered engineering and manufacturing requirements.

***Allowable Subject Matter***

13. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
14. Claim 19 is allowed.
15. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to anticipate or render obvious the plunger having a top marginal edge of the plunger side wall spaced from the top member, wherein the viscous damping fluid is allowed to flow over the top marginal edge into the interior of the plunger.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DE 43 22 191 teaches a vibration damper with a receptacle and plunger.
17. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is (703) 305-1346 (after April 2005 the new telephone number will be 571-272-7128). The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Bucci, can be reached at (703) 308-3668 (after April 11, 2005 the new telephone number will be 571-272-7099). The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

THOMAS WILLIAMS  
PATENT EXAMINER

TJW

March 16, 2005

Thomas William

AU 3683

3-16-05